



**Medical Quality Assurance Commission
Friday August 24, 2007
Business Meeting Minutes**

Medical Commission Members

Cabell Tennis, Public Member, Chair
Les Burger, MD, 2nd Vice-Chair
Frederick H. Dore, Jr., MD
Ellen Harder, PA-C
Judith Page, Public Member --Absent
Theresa Elders, Public Member
Anthony Robins, MD
Thomas Green, MD
Linda Ruiz, Public Member--Absent
Frank Hensley, Public Member

Samuel Selinger, MD, 1st Vice Chair
Kenneth Cogen, MD
Susan Harvey, MD
Hampton Irwin, MD
Chelle Moat, MD
William Gotthold, MD
Judy Tobin, Public Member
Bruce Cullen, MD
Athalia Clower, PA-C
Jo Deevey, MD

Department of Health Staff:

Blake Maresh, Executive Director
Maryella Jansen, Deputy Exec Director
Cindy Hamilton, Compliance Officer
Karl Hoehn, Legal Services Manager
Dani Newman, Compliance Officer

Beverly Thomas, Program Manager
George Heye, MD Medical Consultant
Michael Farrell, Staff Attorney
Mike Weisman, Staff Attorney
Erin Obenland, Disciplinary Manager

Others in Attendance

Pamela Anderson, AAG

Kim O'Neal, AAG

BUSINESS MEETING
CALL TO ORDER

Commission Chair Cabell Tennis, JD called the meeting of Washington State Medical Quality assurance Commission (MQAC) to order at 08:00 a.m. on August 24, 2007 at the Holiday Inn, One South Grady Way, Renton Washington.

1.0 CHAIR REPORT

The Chair opened the meeting with his report. He reported on the recent death of fellow Commissioner Clifford Herman MD on August 3rd. A memorial service was held on August 18, 2007. Dr. Dore and Maryella Jansen, Dr. Ruvalcaba and Ms. Ruvalcaba were able attended on the Commission's behalf. The Chair stated at the conclusion of his report he would ask Dr. Cullen to give of remembrance of Dr. Herman.

The chair welcomed the two new members to the Commission, Joe Deevey MD and Anthony Robbins MD. On behalf of each and every member of the Commission and staff he gave a welcome to this important and challenging work. He stated the new members may leave behind any preconceptions that they may have had about the Commission and to open themselves to a journey of discovery, hard work and appreciated contribution.

The Chair acknowledged Beverly Thomas, Program Manager for her work on the Washington State Medical Association (WSMA) Annual Report and for pulling this report together and sending it to the WSMA.

The Chair reported that since the last meeting the Commission received a reply from Secretary Mary Selecky to our previous letter which is contained in the minutes of our last meeting. Her letter, dated July 16th also has been forwarded on to the members. He mentioned that the Secretary has made a good response to us. The Chair reported though the letter mostly focused on the matter of Mr. Bahn's removal and did not fully deal with all of the Commission's concerns. For instance, there was no mention of the Commission's desire for mediation.

The Chair reported that with the help of Blake Maresh, Executive Director, he had a telephone conversation with Leonard Markus Ph.D., of Harvard University who has agreed to lead the mediation between MQAC and DOH. Dr. Markus plans for a one day event and waiting for further information on the contract before engaging in detail planning. The Chair indicated that he told Dr. Markus of the several decades of stress and conflict with the Department of Health reaching back to the Commission being placed under the administrative support of the Secretary of Health. The Chair reported that he had told Dr. Markus that the Commission wants to end this pattern and move on. The Chair reported a number of essential ingredients of any process that would achieve this.

- 1) The Secretary would be a party.
- 2) All issues would be on the table including the joint operating agreement.
- 3) The process would produce a written memorandum of agreement.
- 4) There would be a follow-up plan to ensure that all possible issues would be resolved in a written agreement satisfactory to both sides.

The Chair stated that Dr. Markus understood and would affirm these concerns. This list of *essential ingredients* has been reviewed by your Executive Committee and we ask your confirmation under other business.

The Chair reported on August 22, 2007, the Commission received an electronic a copy of the independent audit report which reviewed the oversight support and management all of the health-care profession's by it Boards and Commissions and the Department of Health. He stated it is an extensive document which none of the members has had time to adequately review and digest.

The Chair indicated his attention went directly to finding his first concern that states: "*The state's governance structure involving HPQA and the Boards and Commissions responsible for regulating health care professions does not promote effective performance management.*" He went on to report that the report it specifically mentioned the written operating agreements that are required by statute. He added that this issue has long been a contentious issue with the Department which agreed in 1992

to a Joint Operating Agreement but has not agreed to a renegotiate. Instead the Department is operating from a later unilateral statement not agreed to by the Commission.

The Chair stated the audit findings include the recognition that State laws divide the authority to regulate health care professions between HPQA and 16 boards and commissions. The audit reports that while HPQA is responsible for overseeing, credentialing and disciplining of health-care professionals, it does not have responsibility or authority to direct the boards and commissions in matters relating to case resolution and disciplinary actions. He stated that the report make some recommendations which the Commission will carefully review along with the full report. All of which at this point seemed to confirm the need for a mediation which would take us to a workable and supportive agreement.

The Chair reported that the Executive Committee has begun a review of this important document and that every member needs to give it full consideration. The Executive Committee has chosen from the thirteen findings of the audit, six to give special attention to due to their importance to our work. He added that he and Dr. Burger are asking for a conversation with Deputy Director Patty Latsch of Health Professions Quality Assurance to explore with her the possibility that the Commission work with the DOH staff in developing plans to respond to those portions of the audit that importantly impact the practice of medicine.

The Chair reminded the Commission that at the last Business meeting he had reported his request to the staff to review a complex case that raised significant concerns to the media. The Chair reported that he and the staff have had that review in a confidential telephone conference which sought to explore what we might learn from reviewing its long history. He stated that he has asked the staff to continue the learning process. He is very concerned that the Commission and its staff move toward a learning community as the Commission reviews difficult cases and move as far away from looking for blame as possible. The Chair noted that he knows that it is difficult for the Commission and staff who are essentially embedded in a bureaucracy that does not seem to use a learning environment where questions are honored. But let us give it a strong effort.

The Chair indicated the Commission will hear a report from the committee on sanction guidelines at this meeting which the Executive Committee considers this matter to be of the utmost importance, especially in light of the audit. He also reported that a major session at our October workshop will be given over to establishing sound guidelines for the Commission to use in the protection of the public in the administration of our settlement and adjudication of cases. A full discussion of the points of view and experience of the commissioners and staff will be essential to a good result.

In conclusion the Chair mentioned he was very hopeful that the issues will move to a resolution that will enhance the work that we are given to do in the regulation of the practice of medicine and the protection of the public. Conflict resolution and continuing learning are essentials in our faithful and ongoing response to our mission.

MOTION: The Chair entertained a motion to include Bruce Cullen, MD written remembrance of Dr. Clifford Herman to the minutes. The motion was seconded and approved.

Clifford Herman, MD

I would like to ask that my fellow Commissioners on MQAC share my sadness over the recent death of our fellow Commissioner, and my friend and colleague, Dr. Clifford Herman.

Cliff was a remarkable man. He was born in Connecticut and had his medical education and training on the East Coast. After a stint in the Navy, and Vietnam, he moved to Seattle in 1977, where he became a member of the faculty in the Department of Surgery at the University of Washington. Cliff practiced exclusively at Harborview Medical Center and it was there, while I was Chief of Anesthesiology that we met and became friends.

Cliff had numerous notable accomplishments both professionally and in terms of service to his local community. But I will remember him because he was an excellent surgeon and teacher. He had the particular ability to get right to the crux of a problem, and in the manner of a former navy man, to address it on the spot — and, effectively. And, sometimes brusquely!

Unfortunately, Cliff had to deal with a number of stresses. Not only was he the victim of two malignancies, which were probably exacerbated by his heavy smoking, but he had to suffer through a protracted bout that his first wife had with cancer. She died in 1998.

But, Cliff also had a great sense of humor and enjoyed life. He loved medicine, and he loved teaching young physicians. He had a loving family and a happy marriage to his second wife. And, as Cliff related when he had to resign from the Commission a few months ago, he loved doing the work of MQAC and interacting with his fellow Commissioners. It was very difficult for him to quit.

Cliff, we will miss you!

2.0 CONSENT AGENDA

The consent agenda contained the following items for approval:

- 2.1** Agenda for August 24, 2007.
- 2.2** Minutes from the July 13, 2007, business meeting
- 2.3** Ratifications of Licenses

MOTION: The Chair entertained a motion to approve the consent agenda as amended. The motion was seconded and approved.

3.0 PUBLIC POLICY COMMITTEE

3.1 Interpretive Statement on WAC 246-919-370 in the Credentialing of Practitioners who have Retired or Not Practiced for an Extended Amount of Time.

Ms. Harder reported on the progress of the interpretive statement regarding the credentialing of practitioners who have retired or not practiced for an extended amount of time. At this time, it is the consensus of the Committee that two years should be

considered the point at which other requirements will be added.

3.2 Guidelines for Self-Prescribing and Prescribing for Family Members

The Policy Committee deferred the discussion or recommendation whether or not to develop guidelines for physicians self-prescribing and prescribing for family members.

3.3 Puerto Rico Licensure Examination Concerns

Ms. Thomas reported on concerns that the Puerto Rico Licensure examination may fall short in all the major categories that professionals involved with test development would identify as significant, i.e., validity, reliability, standardization, exam security, etc. In addition, by statute, the Puerto Rican medical licensure examination is given in the Spanish language allowing candidates to the opportunity to shift between the two languages or entirely in Spanish or English. However, the Washington state practice act requires physicians to have the ability to read, write, speak, understand and be understood in the English language.

Ms. Thomas reported the following Policy Committee's recommendations to resolve the concerns on a short and long term basis regarding the individuals using any state or territory examination as the qualifying examination for Washington state licensure.

- Repeal Policy MD02-02 "Acceptance of the Puerto Rico Licensing Examination.
- Require all applicants using a state or territory examination to complete a "Request for Examination and Board Action History Report" (EBAHR) and submit it directly from the Federation of State Medical Boards with the appropriate fee. This form not only informs the Commission if the applicant has taken the FLEX or USMLE licensure examinations; but, also if any disciplinary actions were taken in any state.
- Require, on a case by case basis, applicants who are relying on the state or territory examination and have failed the USMLE or Flex to take and successfully pass the SPEX examination before granting a license.
- Begin the rule process on WAC 246-919-360 to consider eliminating any examination other than the NBE, FLEX, USMLE, and LMCC (Canadian), unless the applicant successfully passes the SPEX examination with a minimum score of 75.

MOTION: The Chair entertained a motion to approve the Policy Committee's recommendations as amended and to begin immediately. The motion was seconded and approved.

3.4 Copy and Paste Electronic Medical Record by other Practitioners

The Policy Committee deferred the discussion regarding whether or not it is appropriate for a health care provider to copy and paste portions or all of another practitioners electronic medical records as their own.

3.5 Mentoring for Physicians who fail to Comply with RCW 69.41.010 (13)

Ms Harder and Dr. Selinger reported on the Policy Committees discussion regarding those individuals who fail to comply with the 2006 legislative change to RCW 69.61.010(13) that requires prescriptions to be hand printed, typewritten or electronically generated. By consensus, the Commission agreed to use at least a Notice of Correction for those first time complaints of physicians or physician assistants who fail to write legible prescriptions on a case by case basis.

3.6 Report on Meeting with the University of Washington Credentialing Staff

Ms. Thomas reported on a meeting with the University of Washington Credentialing staff and Commission staff regarding conflicting statutes in the licensure of residents, teaching research and fellow students. She indicated that the University will develop a matrix of the issues and also the credentialing needs of the University in order to expedite identifying the areas that will need to be updated.

3.7 Standardizing Case Review Worksheets

Dr. Burger reported on a suggestion to create a more comprehensive case review worksheet that would include the complaint, priors and the history, as well as an executive summary that can be filed with each case. Ms. Thomas reported that a quick initial solution to the request is to have staff immediately place the case intake assessment with a synopsis of the compliant, prior complaints, and a demographic informational sheet to be placed as the first pages of a complaint file sent to the RCM. In addition, Dr. Burger would like a task group to create an effective and comprehensive worksheet for reviewing commission members. The task group will consist of Dr. Burger, Ms. Thomas and Dr. William Gotthold.

4.0 TASK GROUPS

4.1 Joint Operating Committee

Frank Hensley, Chair, Public Member reported the task group developed a list of items for the Commission and DOH could agree on, as part of the "Walk in the Woods" negotiation process. The list included: (1) that patient safety was our highest mutual priority, (2) to further improve the credentialing process to assure that qualified people are licensed within a reasonable time, (3) the desirability of educating the public as to the role of the Commission, and (4) to improve relationships and communications between the Commission and DOH. He also reported the remainder of the meeting was devoted to a discussion of the audit report that was released the previous day.

4.3 Finance

Les Burger, MD, Chair, reported on the following three areas: 1) Budget—Dr. Burger reported on the 2007-2009 operating budget. He stated that budget document distributed does not include the cost of the services units or the indirect charges. 2) Newsletter—Dr Burger reported reviewing the past Newsletters of the Commission and the current Nursing Commission's Newsletter paid by advertisements. He indicated that it would be extremely difficult to choose appropriate advertisements and the consensus of the task group was that this style would most likely not be read. Dr. Burger reported the task group recommends using a simple 2 page 11x17 sheet newsletters. He reported Ms. Thomas will get an estimated cost of the production and mailing cost to do this newsletter at least twice a year. 3) Educational Meetings – Dr. Burger reported sending out the slide presentation regarding the Commission to all members for their review and comments. He reported that he would like to begin these presentations by September or October.

MOTION: The Commission moved and seconded to not use the company to print newsletters, but for the Commission and its staff to develop a simple 2 page 11x17 inch (8 printed pages) newsletter to keep the practitioners informed and to post the newsletter on the web site as well as mailing.

4.3 Continuing Competency

Chelle Moat, MD, Chair reported that the task group did not meet. However, she had recently received the report on Effectiveness of Continuing Medical Education by the Agency for Healthcare Search and Quality, U.S. Department of health and Human Services. She reported the results shows continuing medical education does increase the overall competency. She will share this information with the Commission.

4.4 Sanction Guidelines

Judy Tobin, Chair, Public Member reported in light of the audit report that the recommendation is to being using the Department of Health's Sanctioning Guidelines worksheets on a trail basis beginning at the October meeting. She emphasized that the worksheets are used only for those cases where actions will be considered by the panels. Ms. Tobin asked that the RCM first fill out the worksheet and then the panel will make an official sanctions worksheet during the case review panel meetings.

4.5 Office Based Surgery Rules

Hampton Irwin, MD Chair deferred to Ms Thomas for the report. Ms Thomas reported that the CR101 documents have been submitted for review and comments by the Department staff. She also reported that the Board of Osteopathic Medicine and Surgery and the Podiatric Medical Board has filed their CR101 rules document to begin the public workshops and process for Office Based Surgery. She also reported the task group by Facilities Services and Licensing on the new legislation regarding Ambulatory Surgical Centers and Office Based Surgery is to begin in September. Ms. Thomas believes this group will help delineate the line where ambulatory surgical centers end

and the office based surgery begins in hope not to overlap areas in the rules or leave gaps. She indicated the task group should be starting its meetings in September because the report is due by December 15, 2007 to the legislature.

4.6 Non-Surgical Cosmetic Procedures Rules

Dr. Selinger reported that the task group discussed potential elements of the rules such as definition, targeting the procedures rather than the title, training, delegation, exclusions, exceptions, type of supervision, etc. Dr. Selinger indicated that the first draft for the language would be shared soon.

5.0 OTHER BUSINESS

5.1 Delegation of Signature Authority for Credentialing, Disciplinary and Rulemaking MD2007-05

Ms. Thomas reported that she had revised the Delegation of Signature Authority according to the Commission's request at the last meeting to add the names of each staff member for each specific delegation.

MOTION: The Commission moved and seconded the approval of the revised Delegation of Signature Authority for Credentialing, Disciplinary and Rulemaking MD2007-05 as written.

5.2 2007 Workshop Agenda

Ms. Thomas reported on the Workshop task group consisting of Judy Tobin, Terry Elders, and Dr. Moat. She indicated she is waiting for the response from the Oregon Board to demonstrate one of their Investigative Interviews allow by their laws. Ms. Tobin and Ms. Jansen reported that the disciplinary presenters will be gathering to discuss their presentation.

MOTION: The Commission moved and seconded the approval of the draft agenda for the 2007 Workshop with the proviso that the agenda will be more complete than its rough draft.

5.3 August 2008 Meeting Date Changes

Ms. Thomas reported the consensus of the Commission was to move the August meeting date to August 27-29, 2008 in order to meet at the Davenport Hotel, Spokane Washington.

MOTION: The Commission moved and seconded the approval to change the meeting date of August 2008 to August 27-29, 2008 at the Davenport Hotel, Spokane Washington.

5.4 Proposed Areas for Discussion in the Negotiations with the Department of Health

The Chair reported that the Executive Committee and the Joint Operating Agreement task group discussed the elements for the negotiations and concluded with at least the following areas of discussion: (1) that patient safety was our

highest mutual priority, (2) to further improve the credentialing process to assure that qualified people are licensed within a reasonable time, (3) the desirability of educating the public as to the role of the Commission, and (4) to improve relationships and communications between the Commission and DOH.

MOTION: The Commission moved and seconded to approve the proposed list of areas for the discussion in the negotiations with the Department of Health.

5.5 Results of the Board/Commission/Committee Survey

Mr. Maresh requested an executive session to discuss the results from the second B/C/C survey on the members' satisfaction with a range of services provided by DOH.

EXECUTIVE SESSION

The Commission went into closed Executive Session with Blake Maresh, Executive Director and Pam Anderson, AAG to discuss personnel issues and pending litigation issues according to the open public meetings act.

The Chair resumed the Open session and requested that due to the interest of time the Executive Session will be continued at the October Workshop in order to finish the discussion regarding personnel issues.

6.0 MEMBERS REPORT

There was nothing to report

7.0 STAFF MEMBER REPORTS

7.1 Executive Director Report

Mr. Maresh deferred his report.

7.2 Deputy Executive Director's Report

No report given.

7.3 Assistant Attorney General Report

No report given.

7.4 Program Manager Report

No report given

7.5 Disciplinary Manager Report

Ms. Obenland reported that she would send around a sign up list for the Wednesday morning IRP/CMT meetings. She also reported in preparation to move the hearings away from the Commission meetings she would like for Commission members to sign up for a specific week per month to be available for a disciplinary hearing. Ms. Obenland also reported that if a hearing gets continued on this scheduled, it would automatically be scheduled the following month's hearing week. The Chair

stated he hope the members would sign up for the hearings. He also stated that the Commission is very pleased with the work of Ms. Obenland since she has been employed with them.

7.6 Medical Consultant Report

George Heye, MD, Medical Consultant reported that there is some misconception and confusion on who is the author of the Prescription Guidelines for Pain that has been released. He indicated the pain specialists developed the guidelines, but the agency medical directors supported their development and published them. Dr. Moat stated that if this was the case the name of the guidelines are misleading. Dr. Heye also reported the he has recently learned that the Center for Personalized Education for Physicians (CPEP) had recently purchased and merged with PROBE an ethical course.

8.0 ADJOURNMENT

The Chair called the meeting to adjourn at 11:10 a.m.

Respectfully submitted by:

Beverly A. Thomas, Program Manager

Cabell Tennis, JD, Chair
Medical Quality Assurance Commission
Approved October 18, 2007